

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
TWENTY-FIRST JUDICIAL DISTRICT AT FRANKLIN

2016-01-19 AM 8:09

ENTERED

STATE OF TENNESSEE, <i>ex rel.</i>)	
ROBERT E. COOPER, JR., ATTORNEY)	
GENERAL and REPORTER,)	
)	
Plaintiff,)	
)	No. 33293
v.)	
)	JURY DEMAND
ROLAND FROEHLIG, a.k.a. Rollie Froehlig,)	
THEODORE HOWES, a.k.a. Ted Howes,)	
NATIONAL FULFILLMENT, INC., and)	
ENTERTAINMENT AMERICA, INC.,)	
)	
Defendants.)	

RENEWED MOTION FOR ASSET FREEZE

Pursuant to this Court's previous instruction and upon information and belief that Defendant National Fulfillment has received significant non-probate assets as a result of Mr. Froehlig's death and has, on its own initiative, begun liquidating assets of the company outside the context of bankruptcy, the State moves for additional funds to be subject to an asset freeze in order to preserve funds for consumer restitution.

This Motion is being filed concurrently with a Suggestion of Death, Motion to Substitute Parties, and a Motion for the Appointment of a Receiver over Corporate Defendants.

The State originally moved for an asset freeze of \$545,456, what it believed based on some records provided by the company to be the total amount excluding interest owed

to consumers who were billed under the “EmTech” account which the State alleges was used to bill consumers for a non-existent product between late July 2005 and September 2005. The Court ultimately granted a \$300,000 asset freeze citing concerns about the viability of the business and its continued operation.

With the liquidation of the Corporate Defendants already occurring, the State now moves for an additional **\$360,038.06**, consisting of the \$545,456 figure compounded annually twice at 10% pursuant to statute less the \$300,000 asset freeze already placed in a registry account with the Williamson County Chancery Court, an additional **\$100,000** for estimated costs of distributing refund checks to consumers (see Exhibit A., Affidavit of Rob Moore), and an additional **\$50,000** to be reserved should the court award attorneys’ fees to the State in this action (see Exhibit B, Affidavit of Brant Harrell). The State seeks a total additional asset freeze of **\$510,038.06** consistent with the terms below.

This Court, in its March 2nd Order Granting Statutory Temporary Injunction With Asset Freeze Including Findings of Fact and Conclusions of Law, found that the State:

has shown *a substantial likelihood of ultimate success* on the merits of its **claim that Defendants Froehlig, Howes, National Fulfillment, Inc.** and Entertainment America, Inc. engaged in identity theft and thereby violated the Tennessee Identity Theft Deterrence Act, Tenn. Code Ann. § 47-18-2103. (Emphasis added)

Statutory interest is explicitly provided for in the Identity Theft Deterrence statute.

Tenn. Code Ann. § 47-18-2105(e) provides:

In any successful action commenced under this part, any ascertainable loss that a person has incurred as a result of the identity theft or misleading, deceptive or unfair practices used to engage in identity theft shall be recovered as restitution for each such person. The person *shall also be awarded statutory interest on that ascertainable loss.*” (Emphasis added).

This Court in its March 2nd Order also explicitly allowed the parties to re-petition to adjust the asset freeze component either upwards or downwards and stated:

IT IS SO ORDERED that both parties have the ability at any time before trial to petition the Court to adjust the asset freeze component of this Order either upwards or downwards for good cause. Such an amendment to this Order shall be made after a hearing, based on the written agreement of the parties and approved by this Court, or otherwise ordered by this Court.

Good cause to adjust the asset freeze upwards now exists. National Fulfillment has begun liquidating its assets and stands to receive substantial assets as a result of Mr. Froehlig's death, including sizeable life insurance proceeds. National Fulfillment's lessor, Lebanon Development Company, filed suit against National Fulfillment, Inc., Roland Froehlig, Mony Life Insurance Company, and Axa Financial, Inc., Case No. 07420 on September 24, 2007 seeking to have the proceeds of National Fulfillment's life insurance policy on Mr. Froehlig which secured National Fulfillment's lease for its warehouse premises distributed to the Wilson County Clerk and Master. Chancellor C.K. Smith granted a permanent injunction directing the life insurance company to pay the Wilson County Clerk and Master's office on October 5, 2007. The pleadings are attached as Collective Exhibit C. Without an asset freeze it is likely that consumers will not be made whole should the State prevail on its action and restitution be awarded.

ADDITIONAL ASSET FREEZE

The State moves accordingly as follows:

(A) Corporate Defendants Entertainment America, Inc., National Fulfillment, Inc., or any of its officers, directors, employees, agents, or any other persons with actual notice of this asset freeze shall be prohibited from liquidating, encumbering, borrowing against, transferring to any other entity or person, withdrawing or otherwise dissipating the additional sum of **\$510,038.06** until otherwise ordered by this Court. Further this sum shall be placed in the

Court's registry to be invested in the same account that the previous \$300,000 asset freeze was ultimately placed in. The account shall be renamed as "Monies Held for Potential Consumer Restitution, Distribution and Attorneys' Fees" in the case of *State of Tennessee v. Roland Froehlig, Theodore Howes, National Fulfillment, Inc. and Entertainment America, Inc.*, Case No. 33293.

(B) The State further moves that the sum of **\$510,038.06** be placed in the registry account with the Williamson County Clerk and Master's office no later than 5 days after entry of the accompanying Renewed Asset Freeze Order should it be granted.

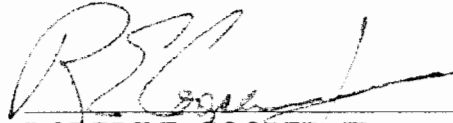
(C) Further, the State moves that Corporate Defendants be required to submit an accounting for both Corporate Defendants of known assets and liabilities, including both adjudicated and unadjudicated court actions. In addition, the State moves that Corporate Defendants shall be required to supply all bank statements during the past three months, checks paid within the past three months, ACH payments sent within the last three months, and an itemized list of any other asset distributed to a third party or scheduled to be paid by a third party, including any life insurance policy owned by the Corporate Defendants, during the past three months no later than **14** days after entry of this Asset Freeze order should any be granted.

No costs shall be taxed to the State as provided by Tenn. Code Ann. § 47-18-2105(g).

In support of this Motion, the State relies upon the previously filed Memorandum of Facts and Law in Support of Motion for Temporary Injunction, the Complaint, the Attachments (and their accompanying Exhibits) made to the original Temporary Injunction Motion, and the Exhibits to this Renewed Motion for Asset Freeze.

**THIS IS THE SECOND APPLICATION FOR EXTRAORDINARY RELIEF
FILED BY THE PLAINTIFF IN THIS CASE.**

Respectfully submitted by:



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CERTIFICATE OF SERVICE

I, Brant Harrell, do hereby certify that the foregoing document was sent via

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On this the 9 day of October, 2007



BRANT HARRELL
Assistant Attorney General